Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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CASE AND COMMENT

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The American Bar Association.

The recent meeting of the American Bar Association held at Buffalo, August 28–30, was very satisfactory. Both in attendance and in interest it gained some advantages from the fact that the International Law Association was to meet at the same place immediately after the adjournment of the Bar Association. Two members of the International Law Association were on the programme of the Bar Association, and read some excellent papers. One, by Sir William R. Kennedy, is further mentioned below, and the other, by Joseph Walton, Q. C., was an historical sketch of the education of English lawyers in earlier days. In the absence of Joseph H. Choate, the president of the association, Ex-senator Manderson of Omaha presided with exceptional skill. His opening address was an admirable review of the changes and development of the law during the past year. The power of the United States to acquire and hold foreign territory was discussed by Senator Lindsay of Kentucky, who reached the conclusion that such power is undeniable. Even those who did not agree with his conclusion agreed that the address was remarkable for its ability. Edward Q. Keasbey of New Jersey reviewed the legislation of his state on the subject of corporations, to show that the liberal policy of New Jersey toward corporations had long been established, and that the recent incorporation there of mammoth trusts was not due to any innovation or change in New Jersey law, but was due rather to the fact that her policy has continued the same, while that of other states has changed.

In all the papers read before the association as a whole, or before its different sections, there was a high average of excellence. But Buffalo reporters were unable to find much "fun" in the proceedings. They said they could get less that was sensational out of all the proceedings of the Bar Association put together than out of a few minutes of the proceedings of the recent convention of reformers in that city. They concluded that the Bar Association was too sensible to furnish much lively "copy." Frantic or lurid speeches, made to exploit the speakers, have no place in the proceedings of this association. Its members understand that progress comes, not by destroying, but by building upon, the past. Its work goes on year after year quietly and sanely, with valuable results.

The International Law Association.

For the first time in its history the International Law Association met this year in America. Its work in previous years has been somewhat fruitful in various ways, but in nothing has it been more gratifying than in aiding the movement for an international tribunal. This association can claim, not all, but at least a fair share, of the credit for the encouraging results in this direction achieved at the recent conference at The Hague. The questions which properly come within the range of the work of this association are by no means confined to the public branch of international law, but extend to the private matters

arising in foreign commerce, the effect of foreign judgments, and in fact to the whole range of international law, private as well as public. Its proceedings at the present session may call for further review hereafter.

Scorching But Just.

"The government of the United States is the most cruel and rapacious creditor and the most dishonest debtor in this country. If a man has a claim against the government which needs the kindness of Congress, he had better destroy all evidence of the debt so that future generations may not be distressed and made bankrupt in an effort to collect the claim."

These are the words of the president of the American Bar Association, as reported by the daily press. They are undoubtedly true. The fact stated is what "Case and Comment," in August, 1898, called "a serious stain on the honor of the United States government." That stain is a shameful one. In this one particular of its treatment of private claims against it our government must be deliberately declared to be one of the most dishonorable governments among men. Every lover of justice, every enlightened lover of his country, who is proud of its greatness, proud of its justice as administered by the courts, must suffer humiliation at the dishonor of his government in respect to those claims against it for which application must be made to Congress. The utter unfitness of Congress, on account of its bulk and other reasons, to dispose of these claims properly, is beyond question. The only adequate remedy is a general law to provide for something equivalent to a judicial investigation of all private claims. It is time that the moral sense of the nation was as much aroused on this subject as on that of French injustice. For the United States to stand before the world as a nation that will not do justice even to its own citizens when they have meritorious claims against it is a disgrace that should make us smart. Some member of Congress, with the requisite ability to carry the measure through, can do his country a great service in securing legislation whereby the government shall promptly and honestly dispose of all just claims against it.

French Justice.

Two things stand out with great prominence in the American view of the Dreyfus trial. One is the extraordinary character of French procedure, and the other is an apparent deficiency in the character of the French people.

The ludicrous medley of hearsay, gossip, beliefs, suspicions, imaginings, and emotions received by the French court as evidence is a surpassing burlesque upon judicial procedure. Even if the judges should disregard what is palpably irrelevant, that would not prevent it from being absurd. To permit a witness to strut before the court in a grandiose way, and declare that upon his honor he believes the prisoner guilty, is in the highest degree ludicrous. The judges may not attribute quite so much importance to the belief of the witness as he himself does, but the fact that they receive it as evidence, and even allow him to tell what some other person also believes, is sufficient to show that they are ready to give at least some weight to those beliefs. But every person who has any acquaintance with the unreasonable prejudices and unaccountable beliefs that are by no means uncommon among men can see that any tribunal which takes into account the beliefs of witnesses on the question of the guilt of an accused person is in great danger of doing injustice.

The exhibition of French character made in this prosecution has been strikingly unfavorable. The conspiracies, the perjuries, and the forgeries revealed in this prosecution are enough to set the world aghast. Probably no other trial ever disclosed so many evidences of corruption among officials to aid a prosecution. It seems difficult to escape the conviction that there was a deliberate and cold-blooded purpose on the part of some of them to work the ruin of an innocent man. Still more significant, perhaps, is the avowed justification of infamous acts on the ground that the good of France required them. It is not a compliment to the character of the French people to have a sane person offer them such a defense for polluting the fountains of justice. To make such a claim of justification presupposes some idea that it will be thought a respectable one; and according to all reports it seems to be taken seriously by many of the French people. In seeking for the reasons why the French people are losing their prestige among the nations we may well believe that the chief of all these reasons is a lack of deep and strong moral character, of which one of the noblest attributes is a sturdy sense of justice.

legislation of his state on the subject of corporations, to show that the liberal policy of

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The Purpose of Punishment.

"The root idea, the governing principle of the punishment of crime, is neither the reformation of the criminal nor the prevention of crime. It is the fitness of suffering to sin—the relation which ought to exist between wickedness and pain." This passage gives the central thought of the address at the American Bar Association by Sir William Rann Kennedy, one of the judges of the English high court of justice and president of the International Law Association.

Two great questions are involved in that proposition: First, What is the nature of crime; second, What is there in the relation of men to each other in society that entitles them to judge and punish their fellowmen.

The theory that crime is only a manifestation of physical imperfection, that the criminal is only an unfortunate, who deserves merely pity, but not blame, has some modern advocates. It is a product of that false fatalism which has had a fascination in all ages for speculative minds, who forget or ignore the fact that it is repudiated by their own unconquerable intuition as to the quality of wrongdoing. The same theory gets some advocates of a widely different type among those who are controlled by sentimentality rather than by reason. Both these classes of people hold the theory as a theory only. They do not practice it. In fact, they probably do not remember it at all when they themselves are made to suffer by a dastardly crime. Indignation, blame, and a sense of outraged justice suddenly scatter their abstract theories and maudlin sympathies and make them realize that crime is blamable and deserving of punishment. The facts of human nature, which must be at the very foundation of any sound philosophy of life, are utterly inconsistent with the theory that crime deserves only pity, but not blame or punishment. So far as this indefensible idea is combated by Sir William R. Kennedy he is performing a valuable service. After making all possible allowances for the defectiveness of criminals and for their evil training, it is in the highest degree important to hold fast to the clear, vital, and enduring distinction between mere mistakes or misfortunes and crime. It is also necessary to remember that there is an ineradicable sense of justice which is one of the fundamental facts of human nature. Punishment must harmonize with this sense of justice in order to be efficacious even for the prevention of crime or the reform of the criminal. Whatever we may think of the right of men to execute justice purely for the purpose of retribution, they must execute punishment, whatever their purpose, in conformity with this sense of justice, else they fail of their purpose and fight against the nature of things.

The right of men to punish a fellowman is not discussed by Sir William R. Kennedy, but is taken for granted. In fact, the existence of this right is necessary to the existence of any government. But the extent of the right and the basis on which it rests are questions not easy to answer. The right of self-defense, which is recognized by the common consent of mankind, would justify the punishment of crime so far as that is necessary to protect society. But it does not include any right to punish merely to reform the criminal, except so far as that reformation is an incident to the prevention of future crime. Neither reformation as such nor the vindication of justice as such has any legitimate part in the purpose of punishment, if that is limited to the protection of society. But reformation of the criminal clearly tends to protect society by preventing him from committing any more crimes or teaching others to do so. Vindication of justice, by imposing on the criminal a punishment which the common judgment of men deems a fit penalty for his crime, also tends, not only to deter him, but to deter others, from future crimes. But can it be a distinctive purpose either to reform the criminal or to vindicate justice? For such purpose can punishment be given to an extent or in a way that is not needed for the protection of society? No question goes deeper into the subject of human relations. Are men so far clothed with the divine functions of justice,—are they so far their brother's keeper, that they have the right and duty to punish his offense either for the purpose of his own reformation or to inflict upon him the suffering that ought to be visited upon his sin? Sir William R. Kennedy's doctrine requires an affirmative answer, and the moral sense of mankind may seem to give it some support. The universal feeling is that crime ought to be punished. But for all practical purposes it may be sufficient to say that whether the true theory of the purpose of punishment goes beyond the protection of society or not it is equally important that the punishments inflicted should be such as the common judgment of men will deem fit, adequate, and just.

in the American view of the Dreyfus trial. of justice.

Service on Agent of Nonresident.

Discrimination against nonresidents in respect to service of process is held unconstitutional in Caldwell v. Armour, 43 Atl. 517, by the superior court of Delaware. The statute allowed service on the manager or agent in charge of a business owned by a nonresident, but did not have such provision in respect to a resident owner. The court says: "It is not material whether the mode of constructive service provided for nonresidents doing business here is as effective for the purpose of actual notice as that provided for residents, or whether that provided for such nonresidents is better than certain other modes of constructive service which have been condemned as insufficient. Nor is it material that the service in this case was likely to result, or that it did in fact result, in actual notice to the defendants of the pendency of this action." The discrimination between residents and nonresidents was held to deny to the latter the equal privileges and immunities of citizens guaranteed to them by the Federal Constitution.

Some discrimination in matters of procedure between residents and nonresidents has been made by the long-established practice of the courts everywhere. As instances, may be mentioned the requirement of security for costs from nonresidents, the granting of attachments against nonresidents, the running of the statutes of limitations, and other particulars mentioned in a note in 14 L. R. A. on page 583. The constitutionality of discriminations against nonresidents in respect to the statute of limitations is sustained by the Supreme Court of the United States in Chemung Canal Bank v. Lowery, 93 U. S. 72, 23 L. ed. 806, while the very late case of Central Loan & Trust Co. v. Campbell Commission Co. 173 U. S. 84, 43 L. ed. 623, sustains a statute authorizing an attachment against a nonresident, without giving the bond required for an attachment against a resident. If the Constitution does not prohibit such discriminations as these against nonresidents, it would seem that it might permit some discrimination against them in the matter of serving process.

The question of due process of law in case of such service was not passed upon by the Delaware court, which based its decision entirely upon the ground that there was a denial of the equal privileges and immunities of citizens. But, if that ground should not be sufficient to condemn the statute, the question of due process of law would arise. What will constitute due process of law in the service of process is by no means fully established. There are well-recognized exceptions to the rule which requires personal service on the defendant himself, and the constitutionality of the provisions applicable to them, if not actually decided, is conceded by the failure to contest it. Such are cases in which service is made upon persons under disability or those who have absconded or concealed themselves, and various other cases. But in spite of long acquiescence in statutory provisions for substituted service in some of these cases, it is by no means certain that the statutes would be upheld if brought to a test.

There is much ground for contending that a person doing business in the state through an agent ought to be in some way subject to process in that state. A statute authorizing process against the owner of any business to be served on a managing agent in charge of the business would be free from the objection which was held fatal in the Delaware case, if the provisions were made applicable to residents as well as to nonresidents. But, if it were also held to furnish due process of law, it would create a grave danger unless there were some restrictions made as to the judgment that might be taken on such service. If judgment were not allowed to bind the defendant personally, but only to bind the property in the agent's control, it would be somewhat analogous to judgments against a partnership obtained by service on one partner only.

The Harter Act.

The recent change in the law of the United States respecting a carrier's liability for goods transported by ship and the causes leading up to this change are discussed with characteristic ability by Everett P. Wheeler in a paper read by him before the International Law Association at Buffalo, and now printed in 32 Chicago Legal News, 22. The constant struggle of common carriers to limit their liability by exemption clauses in bills of lading, the protests of shippers against the unreasonableness and unfairness of these exemptions, and the conflicting interests of underwriters led Congress to make an attempt by the Harter act to establish a fair and equitable basis of liability for transportation by water. The act, roughly stated, prohibits the shipowner from contracting against liability for any fault or negligence in loading,

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as the common judgment of men will deem fit, adequate, and just.

stowage, custody, or care of the goods shipped, and also from contracting against liability for failure to use due diligence in equipping the vessel and making her seaworthy; but it provides that, if he shall exercise due diligence to furnish a properly-equipped and seaworthy vessel, neither he nor the ship shall be liable for any fault or errors in her navigation or management. The effect of the act as interpreted by the numerous decisions upon it is very clearly explained by Mr. Wheeler. It is his opinion that "the act was not only an important but a beneficent piece of legislation, and that on the whole it has done justice to all the parties in interest." He says: "We may fairly conclude, therefore, that the act is likely to remain a permanent portion of American jurisprudence. It is very much to be desired that the adoption of this act may lead to an agreement between all commercial nations as to the principal features of bills of lading. We may justly say that it is an important step in that direction, and therefore to be welcomed by this association, which has done so much for the unification of the maritime and commercial law of the civilized world."

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 44, Parts 4 and 5.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with Case and Comment for one year for $1.

Among the New Decisions.

Assignment.

An assignment of accounts and other choses in action to a purchaser in good faith, who obtains actual possession of them and immediately notifies the debtors, is held, in Graham Paper Co. *v.* Pembroke (Cal.) 44 L. R. A. 632, to confer a perfect legal title thereto as against a prior assignee who took them only as security, but who, without obtaining possession of them or giving notice to the debtors, left them with the assignor for collection.

Banks.

The right of a bank to send a check or draft directly to the drawee bank for collection is denied in Minneapolis Sash & Door Co. *v.* Metropolitan Bank (Minn.) 44 L. R. A. 504, notwithstanding the existence of a usage and custom among banks to do this.

Bills and Notes.

The existence of a debt due by the drawee of a bill of exchange to the payee is held, in Citizens' Bank *v.* Millett (Ky.) 44 L. R. A. 664,

of citizens. But, if that ground should not be sufficient to condemn the statute, the shipowner from contracting against liability for any fault or negligence in loading,

to constitute a sufficient consideration to bind the drawer upon his promise to pay the bill and render him liable for the amount, although he was a stranger to the debt.

Brokers.

A real estate broker who contracts to produce a purchaser is held, in Lunney *v.* Healey (Neb.) 44 L. R. A. 593, to perform his contract by the production of one financially able, with whom the owner actually makes an enforceable contract of sale, even if it is not enforced.

Building and Loan Associations.

The issuance of preferred stock by a building and loan association which is based on principles of co-operation, equality, and mutuality is held, in Sumrall *v.* Columbia Finance & Tea Co. (Ky.) 44 L. R. A. 659, to be void as against public policy.

Canals.

The right of the owner of a canal which has become a substitute for a natural watercourse to abandon his use of it is sustained in Case *v.* Hoffman (Wis.) 44 L. R. A. 728, although he acquired the canal with notice of certain open, visible, and notorious rights of other persons therein, which required the maintenance, so long as the canal is used, of a dam or bulk-head to furnish them with water from the canal.

Carriers.

The duty to unload cattle, sheep, swine, or other animals for rest, water, and feeding, imposed by U. S. Rev. Stat. § 4386, when they are confined for twenty-eight hours during transportation from one state to another, is held, in Chesapeake & O. R. Co. *v.* American Exch. Bank (Va.) 44 L. R. A. 449, to extend to horses and mules as well as to animals intended for food, and a civil action against the carrier to recover damages for violating this Federal statute is held maintainable in a state court.

A woman with a transfer ticket, approaching a street car to get on, when she is struck by a piece of the trolley pole, which breaks while the motorman is trying to shift it to the other end of the car, is held, in Keator *v.* Scranton Traction Co. (Pa.) 44 L. R. A. 546, to be a passenger, within the rule fixing the degree of care due toward passengers.

On the abandonment of its trip for the season by a steamer starting from Seattle to Dawson, and reaching Ft. Yukon, but unable to go on because of the low stage of water in the Yukon river, it is held, in Smith *v.* North American Trans. & Tea Co. (Wash.) 44 L. R. A. 557, that it is the carrier's duty to bring a passenger back to Seattle without charge, and not leave him through the winter in the Alaskan climate, to await the carrier's convenience for completing the transportation during the following summer.

Contracts.

A contract that a railroad company shall be relieved of liability for the injury or death of an employee, by the acceptance of benefits from a relief fund which the employer helps to provide, is held, in Pittsburg, C. C. & St. L. R. Co. *v.* Moore (Ind.) 44 L. R. A. 638, to be valid under a statute prohibiting contracts to relieve railroad companies from liability to employees where the contract does not relieve the employer unless the employee chooses to accept his option of taking the benefits of a relief fund, but leaves him also the right, in the alternative, to bring an action against the company.

Such a contract is also held, in Johnson *v.* Charleston & Savannah R. Co. (S. C.) 44 L. R. A. 645, to be permissible under the state Constitution, giving employees the same rights and remedies in certain cases that are allowed to persons who are not employees, and prohibiting any waiver of the benefit of that section.

Corporations.

The liability of a director of a corporation in tort is held, in Cameron *v.* Kenyon-Connell Commercial Co. (Mont.) 44 L. R. A. 508, to exist when the corporation has committed a tort, such as the maintenance of a nuisance, with the knowledge and authorization of such director, but it is held that he is not liable for a tort of which he did not know and could not know by the exercise of reasonable diligence.

Criminal Law.

The excusing of a juror by the court in the absence of the prisoner, after some evidence had been introduced in a criminal case, thereby causing the discharge of the jury without

The existence of a debt due by the drawee of a bill of exchange to the payee is held, in Citizens' Bank v. Millett (Ky.) 44 L. R. A. 664,

a verdict, is held, in Upchurch v. State (Tex.) 44 L. R. A. 694, to sustain a plea of former jeopardy, where the juror was discharged upon his representations as to his wife's sickness.

Death.

Causes of action for personal injuries which survive the death of the persons injured under the Wisconsin statutes are held, in Brown v. Chicago & N. W. R. Co. (Wis.) 44 L. R. A. 579, to be not limited to cases where death does not ensue from the injury, although other sections of the statute provide a right of action for relatives injured by wrongful death. But the cause of action for personal injury which survives under § 4253 is held to be separate and distinct from the cause of action given to surviving relatives by § 4255.

Deeds.

A deed to a son of the grantor, and "his own brothers and sisters," is held, in Morris v. Caudle (Ill.) 44 L. R. A. 489, to give no interest to a child born a short time after the execution of the deed. And, although the deed was not delivered until after the birth and also the death of the child, it was held to give no interest either to the child or those claiming under him.

Druggists.

The duty to put a label containing the word "Poison" on every poisonous liquid or substance, though imposed by the statute in general terms, is held, in Wise v. Morgan (Tenn.) 44 L. R. A. 548, not to extend to medicines compounded upon the prescription of a physician, though they contain poison.

Evidence.

The burden of showing a carrier's want of negligence in the loss of property during transit is held, in Mitchell v. Carolina Central R. Co. (N. C.) 44 L. R. A. 515, to rest upon the carrier, although the property was shipped under a contract which limits the carrier's liability to a loss resulting from its negligence.

Executors and Administrators.

The special title acquired by an assignee of a mortgage assigned for the purpose of foreclosure only is held, in Taylor v. Carroll (Md.) 44 L. R. A. 479, not to vest in or devolve upon his administrator upon his death.

False Personation.

The unreasonable refusal of a passenger to state his name when asked by a conductor, to whom he tenders a mileage ticket, if the name thereon was his own, is held, in Palmer v. Maine Central R. Co. (Me.) 44 L. R. A. 673, insufficient to justify the conductor in procuring his arrest without a warrant on the charge of fraudulently evading payment of fare. But it is held to mitigate the damages for the passenger's wounded pride and sensibilities.

Ferries.

The liability of a municipality for damages caused by negligence in the operation of a ferry which the city officials were operating without authority is denied in Hoggard v. Monroe (La.) 44 L. R. A. 477, although it was operated in the name of the city, under authority of the common council.

Fixtures.

Stock mantels sold separately and made adaptive to any kind of a house, and which support themselves without any fastenings, or may be fastened merely by screws, are held, in Philadelphia Mortgage & Trust Co. v. Miller (Wash.) 44 L. R. A. 559, not to constitute fixtures as matter of law, but it is held that the jury may find that they are removable. The same was held as to bath tubs resting upon legs and attachable to any heating system, and also as to a hot-water heater attached only by plumbing connections.

Husband and Wife.

The permanent alimony granted to a woman on divorce is held, in Hooper v. Hooper (Wis.) 44 L. R. A. 725, to be not necessarily limited to an allowance payable at stated periods, sufficient for her support, but to be allowable in a gross sum out of the husband's estate, in addition to a monthly allowance.

Infants.

The restoration to their parents of infants committed to a charitable institution is held, in *Re* Knowack (N. Y.) 44 L. R. A. 699, to be within the general jurisdiction of the supreme

degree of care due toward passengers.

had been introduced in a criminal case, thereby causing the discharge of the jury without

court of New York as a court of chancery, and also within the power conferred by statute for the return of pauper children to the custody of their parents, when the interests of the children will be promoted thereby and their parents are fit, competent, and able to give them proper support and education.

Intoxicating Liquors.

The determination as to the issuance of a license for the sale of intoxicants under Maryland statutes upon an application by the clerk, when an objection has been filed, is held, in McCrea v. Roberts (Md.) 44 L. R. A. 485, to be required to be made upon notice and after hearing evidence, and therefore judicial in its nature, instead of a purely executive or administrative function.

Injunction.

Owners of property so near to a house of ill fame that their enjoyment of their property is affected by disgusting sights and sounds in such house are held, in Blagen v. Smith (Or.) 44 L. R. A. 522, to sustain an injury different in kind from that which is suffered by the public at large, and therefore entitled to an injunction against the maintenance of the nuisance.

An injunction against an unauthorized obstruction of a street by telephone poles is sustained in Marshfield v. Wisconsin Telephone Co. (Wis.) 44 L. R. A. 565, and the placing of the poles in the street without authority is held not to be justified by the fact that there were no ordinances or regulations in relation to pole setting.

Insurance.

A recovery against an employer for the death of an employee is held, in Embler v. Hartford Steam Boiler Inspection & Insurance Co. (N. Y.) 44 L. R. A. 512, to preclude any right of the employee's representatives to recover on an insurance policy taken out by the employer, which includes a clause insuring against death or injury of an employee, and provides for payment to the employer "for the benefit of the injured person or persons, or their legal representatives."

Children to whom a policy of insurance on their father's life is payable if their mother be not living at his death are held, in Voss v. Connecticut Mutual L. Ins. Co. (Mich.) 44 L. R. A. 689, to have a vested, although contingent, interest, and on the death of one of them before his mother's death his interest is held to descend to his widow and children.

Landlord and Tenant.

The retention of one room in a leased building for fifteen days after the expiration of the lease, because it is occupied by a member of the tenant's family who is too ill to be safely moved, is held, in Herter v. Mullen (N. Y.) 44 L. R. A. 703, not to constitute such a holding over as will create an implied contract or duty imposed by law to pay rent for the whole of a new term, if the premises are completely surrendered when the patient can be moved, and prior notice of intention had been given and the usual notice to let had been placed on the building by the landlord.

Legislature.

The question of the existence of an extraordinary occasion of sufficient gravity to justify a call for an extra session of the legislature is held, in Farrelly v. Cole (Kan.) 44 L. R. A. 464, to be a matter for the determination of the governor alone in the exercise of his discretion as a sworn officer, and this discretion cannot be challenged or reviewed by the courts.

Liens.

An innkeeper or keeper of live stock who has a lien on property is held, in Lambert v. Nicklas (W. Va.) 44 L. R. A. 561, not to lose his lien by levying an attachment upon the property.

Life Tenants.

The mere acceptance by a life tenant of a devise of real estate containing a direction to keep in repair is held, in Sampson v. Bagley (R. I.) 44 L. R. A. 711, not to impose upon him the duty to rebuild in case of the accidental destruction of buildings by fire, but it is held that he is a trustee for the remainder men of the excess of insurance received by him over the value of his life estate, unless the money is used to rebuild.

Lis Pendens.

More than twenty years' delay in proceeding with a foreclosure after it has been begun is held, in Taylor v. Carroll (Md.) 44 L. R. A.

The special title acquired by an assignee of a mortgage assigned for the purpose of fore-

committed to a charitable institution is held, in *Re* Knowack (N. Y.) 44 L. R. A. 699, to be within the general jurisdiction of the supreme

479, sufficient to relieve a purchaser of the property from the effect of the *lis pendens*, if there is no satisfactory excuse or explanation of the delay.

Lynching.

The liability of a county "in all cases of lynching when death occurs," under the South Carolina Constitution, is held, in Brown *v.* Orangeburg County (S. C.) 44 L. R. A. 734, to extend to cases in which the persons lynched were not prisoners or in custody of the court.

Mandamus.

A writ of mandate to compel the board of dental examiners to indorse a diploma on the ground that it was issued by a reputable dental college is denied in Van Vleck *v.* Board of Dental Examiners (Cal.) 44 L. R. A. 635, when the board has decided to the contrary, under a statute requiring them to indorse the diploma "when satisfied of the character of such institution."

The operation of a line of street railway which has been abandoned is held, in State *ex rel.* Knight, *v.* Helena Power & Light Co. (Mont.) 44 L. R. A. 692, to be beyond the power of the court to order by writ of mandate, where the right to use the streets was given subject to forfeiture for failure to operate the franchise, and there was no express provision requiring the operation or maintenance of the line.

Master and Servant.

The rule that an employer is not liable for the negligence of an independent contractor is denied application in Bonaparte *v.* Wiseman (Md.) 44 L. R. A. 482, where a contractor is employed to excavate a lot close to a neighbor's house in a populous city, but the proprietor is held liable to see that in doing the work due care is taken to protect the neighbor's wall, or timely notice given him to protect it.

Negligence.

Permitting a shivered pane of glass to remain in a window above a street where pedestrians are frequently passing, when there is apparent danger of the pieces falling or being shaken out by the wind or otherwise, is held, in Detzur *v.* B. Stroh Brew. Co. (Mich.) 44 L. R. A. 500, to be such negligence as will create a liability to a person who is struck by a piece of the glass while on the sidewalk below the window.

The maintenance of dangerous machinery on private grounds, unprotected from visits of trespassing children, is held, in Biggs *v.* Consolidated Barb-Wire Co. (Kan.) 44 L. R. A. 655, to render the owner of the land, who has knowledge that children and others are accustomed to frequent the grounds and climb upon structures which support the dangerous appliances, liable in damages for an injury to a boy caught in the machinery and killed.

Pest House.

For the damages caused by the erection of a pest house near the residence of a person, it is held, in Clayton *v.* Henderson (Ky.) 44 L. R. A. 474, that a city is liable, notwithstanding the fact that it is erected within a mile of the city in violation of a statute which expressly makes the officers liable, without declaring that the city is liable.

Principal and Surety.

A surety who has been obliged to pay the obligation is held, in Pace *v.* Pace (Va.) 44 L. R. A. 459, to have the right to prove the entire debt against the insolvent estate of his cosurety and receive dividends upon the entire debt until reimbursed that half of the common burden which belonged to the cosurety.

Public Improvements.

The right of a city to take a bond from a street contractor to keep a street and pavement in repair for five years after performing the contract is denied in Portland *v.* Portland Bituminous Paving & Imp. Co. (Or.) 44 L. R. A. 527, when the bond covers in effect all injuries liable to arise from whatever source, and is not limited to defects in the performance of his contract.

Under a statute requiring the cost of making ordinary repairs in street pavements to be paid by the city, and not by the abutting lot-owners, it is held, in Robertson *v.* Omaha (Neb.) 44 L. R. A. 534, that the removal of wooden blocks laid on a concrete base and their replacement with vitrified brick laid on the old base is a repavement of the street, for which the abutting lots may be assessed, and is not merely an "ordinary repair."

A guaranty of the durability of a pavement for five years, made in a contract for street

Connecticut Mutual L. Ins. Co. (Mich.) 44 L. R. A. 689, to have a vested, although contin-

with a foreclosure after it has been begun is held, in Taylor *v.* Carroll (Md.) 44 L. R. A.

paving, with a provision that the contractor shall repave at a stated price all openings made in the street during the same time, is held, in State, *ex rel.* Wilson, *v.* Trenton (N. J.) 44 L. R. A. 540, to be lawful.

The enlargement of the liability of a street-railway company for paving a street is held, in Storrie *v.* Houston City St. R. Co. (Tex.) 44 L. R. A. 716, to be constitutional, where the company's rights were acquired subject to a constitutional provision that all privileges and franchises shall be subject to legislative control, and that there shall be no irrevocable or uncontrollable grant of special privileges or franchises.

Public Moneys.

Public moneys deposited by an officer in a bank of which he was a partner are held, in Board of Fire & Water Commissioners *v.* Wilkinson (Mich.) 44 L. R. A. 493, to constitute a trust fund, even if he had a legal title to the money.

Removal of Causes.

That the removal of a cause from a state to a Federal court transfers exclusive jurisdiction, not only of the action then pending, but of the entire cause of action, is held, in Baltimore & O. R. Co. *v.* Fulton (Ohio) 44 L. R. A. 520, which denies the right to recommence the action in a state court after the first action has been dismissed in the Federal court, though it was not dismissed on the merits.

Reward.

The offer of a reward for testimony that shall secure the conviction of persons who set fire to buildings within city limits is held, in People, *ex rel.* Maynard, *v.* Holly (Mich.) 44 L. R. A. 677, to be within the general power to make regulations for the safety and general welfare of the inhabitants.

Taxes.

The distinction between specific and ad valorem taxes under the Michigan Constitution is presented in Pingree *v.* Dix (Mich.) 44 L. R. A. 679, which holds that specific taxes appropriated to educational funds and excepted from the rule of uniformity do not include an ad valorem tax on telegraph and telephone lines levied by a state board in lieu of all other taxes.

Unborn Children.

See DEEDS.

Recent Articles in Law Journals and Reviews.

"County Courts."—24 Law Magazine and Review, 385.

"Prisons in England and America: A Contract."—24 Law Magazine and Review, 408.

"The Bench and Bar in France."—24 Law Magazine and Review, 431.

"Conditional War."—24 Law Magazine and Review, 436.

"The Golden Age of Law."—24 Law Magazine and Review, 440.

"State Interference in (a) Contraband Trade, (b) Blockade-Running."—24 Law Magazine and Review, 448.

"The Peace Conference at The Hague."—24 Law Magazine and Review, 457.

"Employers' Liability and Workmen's Compensation."—24 Law Magazine and Review, 462.

"The Bankrupt Law of 1898—Its Merits and Defects."—7 American Lawyer, 283.

"Trademarks and Unfair Competition in Trade."—7 American Lawyer, 285.

"For Jurisdictional Purposes, a Legal Domicil once Existing Continues until Another is Acquired Elsewhere."—49 Central Law Journal, 124.

"Banks; Insolvency; Right to Set Off against Note; Trust Fund."—49 Central Law Journal, 127.

"Enforcement of Foreign Judgments in American Courts."—35 Canada Law Journal, 474.

"Interstate Extradition."—49 Central Law Journal, 104.

"Corporal Punishments for Crime."—17 Medico-Legal Journal, 61-111.

"Insanity and Murder.—A Theory as to the Burden of Proof."—49 Central Law Journal, 163.

"Fraudulent Transfers; Payment of Money."—49 Central Law Journal, 169.

New Books.

"Commentaries on the Law of Private Corporations." By Seymour D. Thompson. Vol. 7. A Supplementary Volume Containing Recent Decisions from 1895 to 1899, also a General Index of the Whole Work. (Bancroft-Whitney Co., San Francisco, Cal.) 1899. $6.

"The Federal Courts, Their Organization, Jurisdiction, and Procedure." Second Edition. With Appendix on Bankruptcy Jurisdiction

shaken out by the wind or otherwise, is held, in Detzur v. B. Stroh Brew. Co. (Mich.) 44 L. R. A. 500, to be such negligence as will

is not merely an "ordinary repair."

A guaranty of the durability of a pavement for five years, made in a contract for street

and Practice. By Charles H. Simonton, U.S. Circuit Judge. (B. F. Johnson Pub. Co., Richmond, Va.) 1898. 1 Vol. $2.

"Principles of Equity." By George Tucker Bispham. (Kay & Bro., Philadelphia, Pa.) 1 Vol. $5.

"Hochheimer's Custody of Infants." Third Edition. (Harold B. Scrimger, Baltimore, Md.) 1 Vol. $2.50.

"Foreign Patent and Trademark Laws." A Comparative Study, with Tabular Statements of Essential Features. By Arthur P. Greeley. (John Byrne & Co., Washington, D. C.) 1 Vol. $5.

"New York Railway Code, 1899." With Decisions and Forms. 1899. Edition of Wells on Railroads. (Banks & Co., Albany, N. Y.) 1 Vol. $2.50, Half Sheep. $2, Paper.

"Code of Civil Procedure in New York." With Amendments of 1899. (Banks & Co.) 1 Vol. $3.

"New York Code of Criminal Procedure and Penal Code." With Amendments of 1899. (Banks & Co.) Each $1.50, Cloth. $2, Sheep.

The Humorous Side.

AN EASY MOTHER.—A judge, answering objections to a mother's fitness to have the custody of her children, said as to the fact that she was untidy: "There are persons who think that excessive house cleaning ought to be made a ground for divorce." As to her visits to beer gardens he said: "Women have throats which become thirsty as well as the throats of men, and there is no law to prevent them from slaking their thirst in a natural and ordinary way." In order to give her some moral support, he added: "It is said of Martin Luther that he visited beer gardens."

HEAPING COALS OF FIRE.—In an action against an elevated railway company for dropping live coals on the head of a person in the street below, Brunt, P. J., recently said: "It has no right to heap coals of fire on the heads of passersby, no matter with how much care or circumspection it is done." The judge doubtless remembers that sacred authority which recommends coals of fire for an enemy. But it does not say that this remedy may be extended to mere passersby.

A JUDGE THAT WAS TOO SMART.—The facetiousness of a judge in saying to an attorney, "Your brains seem to be out of order," and that the court could not hold a mathematical school to teach him how to ask his questions respecting certain measurements, doubtless gave the judge much satisfaction at the time, but the satisfaction was less for him and more for the attorney when the Supreme Court reversed the decision because of the judge's smartness.

MONKEY BUSINESS.—An indictment for libel in a published article saying, "It is the intention of the democratic bosses to renew the monkey business again at the polls,"—was held bad in a recent case because there was "no averment of extrinsic facts by reference to which the meaning of the term 'monkey business' can be ascertained."

Evidently the judges were somewhat unfamiliar with our common English terms.

POST MORTEM PENSIONS.—The curiosity of a correspondent has been awakened by the recent statement in Case and Comment respecting "pensions for policemen who die from natural causes." He wants to know where such pensions are payable. There is much reason to fear that the correspondent is malicious. There are several answers to his question, and, as the Hibernian lawyer said to the court, if the first one is wrong, the others are "equally conclusive." The pensions may have been paid *nunc pro tunc* while the policemen were alive, and in that case were probably paid at the city hall. If paid after death, payment was probably made after the manner adopted by the sagacious Israelite in a certain case, by making a check or draft payable to the order of the deceased. This would be an entirely safe mode, and the courts sustain a presumption growing out of the efficiency of our mail service, that a communication properly addressed and stamped will be properly delivered. Another possibility is that the money was payable to the family of the deceased.

Unborn Children.
See DEEDS.

With Appendix on Bankruptcy Jurisdiction.